

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

United States of America :
 :
 :
 vs :
 :
 :
Eugene Steven Keeney :

1:10-CR-00180

BEFORE: HONORABLE WILLIAM W. CALDWELL
PLACE: Harrisburg, Pennsylvania
PROCEEDINGS: Sentencing
DATE: May 11, 2011

APPEARANCES:

For the United States: Gordon A. Zubrod, Esquire
 U.S. ATTORNEY'S OFFICE
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 Harrisburg, PA 17108

For the Defendant: Gina R. Tennen, Esquire
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OFFICIAL COURT REPORTER

1 (9:55 a.m., convene.)

2 MR. ZUBROD: Your Honor, we're here in the case of
3 United States versus Eugene Kenney. Mr. Kenney was indicted on
4 June the 9th of 2010. He entered a plea of guilty on November
5 the 22nd of 2010 to count one of the indictment, a violation of
6 Title 18 United States Code, Section 2343, which was accepted
7 by the Court, and he was released on his own recognizance.

8 The pre-sentence investigation has been completed.
9 There is a single objection before the Court. And at this
10 time, upon resolution of that issue, the United States moves
11 for sentencing.

12 THE COURT: Mrs. Tennen, do you wish to pursue that
13 objection?

14 MS. TENNEN: I do not, Your Honor. Well, I would like
15 to, first of all, say this is the first time I have appeared
16 before this Court. So I wanted to introduce myself first. I
17 wanted to also explain that I've submitted a sentencing
18 memorandum, which was pretty thorough.

19 THE COURT: I have read that.

20 MS. TENNEN: Okay. And I know that the Court doesn't
21 usually require that. So I have submitted that for you. And I
22 didn't want to belabor or to reiterate all of the points in
23 there. But if I may have an opportunity to speak.

24 THE COURT: This is your opportunity.

25 MS. TENNEN: Now is the time. Okay. Thank you, Your

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1 Honor.

2 First of all, Your Honor, I wanted to explain that
3 there was some disparity between the agreed plea agreement that
4 Mr. Zubrod and I came to and the probation report, which I
5 illustrated in both of my objections to the probation report,
6 the PSR report as well as illustrated in my sentencing
7 memorandum.

8 So there was some disparity between the guideline
9 range, which I felt, and I did some pretty extensive research
10 to try to demonstrate to the Court, that there is reasons why I
11 vehemently disagree with the probation's assessment of their
12 guideline range.

13 I feel that undue influence -- the probation feels
14 that undue influence was present in this case. And I know that
15 the Court has probably reviewed my arguments on that very
16 point. And I feel that both the probation department felt that
17 the age disparity as well as the presence of alcohol, which I
18 explained to the Court, that that was an issue of contention.

19 And that was something that Mr. Zubrod and I had put
20 into our plea agreement as a footnote to the plea agreement to
21 show that there was a disparity, or I should say there was a
22 footnote in the plea agreement to show that we had agreed that
23 we --

24 MR. ZUBROD: No. I'm sorry. What the footnote said
25 is the victim said that the defendant provided her with

1 alcohol. A footnote was placed in saying the defendant
2 vehemently denies that.

3 *THE COURT:* I understand all of that.

4 *MS. TENNEN:* Okay, Your Honor.

5 *THE COURT:* I understand. I have read your sentencing
6 memorandum. I think the issue here this morning and your
7 objection deals with undue influence.

8 *MS. TENNEN:* That's right, Your Honor.

9 *THE COURT:* Okay.

10 *MS. TENNEN:* And like I said, the issue with respect
11 to the age disparity, Your Honor, was one of many issues.
12 There is -- I was trying to present to the Court that there was
13 a totality of the circumstances that I would like the Court to
14 pay attention to and to show the Court. One of the -- give me
15 a moment, Your Honor, please.

16 One of the main issues is obviously undue influences,
17 as illustrated in United States versus Root case. In that case
18 I was trying to show the distinction between the facts of that
19 case and Mr. Kenney's case. And that case, the defendant in
20 that case was using a superior knowledge, persuasion,
21 manipulation to get this victim to sort of come on board with
22 his philosophies, to manipulate her into engaging in sex acts
23 with him. And I think that there is a mentality that that
24 particular defendant used in that case. Power of persuasion,
25 for lack of better words, to persuade that victim in the case

1 through language, through terms, through their words to get
2 that victim to come on board with his theories.

3 This case with Mr. Kenney, it's very different, Your
4 Honor. Mr. Kenney, first of all, comes from a different place.
5 I've tried to demonstrate that. Mr. Kenney is -- has shown
6 through history not only that he has come at a very young age
7 from a very poor and abusive childhood but he -- in which he
8 did, out of necessity to some extent, engage in some criminal
9 contact, which is over 26 years ago.

10 Coming to this point today, he has really shown growth
11 from that. This being 26 years later, he's really grown from
12 that point. It shows. He is running a business. He has had a
13 marriage for 25 years. He has had children that he has raised
14 from very young. He has solidarity. He has foundations. He
15 has consistency.

16 So coming to this point today with respect to the
17 United States versus Root case and Mr. Kenney is that undue
18 influence, age is one factor, Your Honor. Age is -- there's
19 sort of a presumption that because there's such a distinction
20 between a person's age that there must, therefore, be
21 manipulation or persuasion or that power. But that's not the
22 case, Your Honor.

23 Looking at the other elements of it with respect to --
24 you know, with respect to his engagement, his discussions with
25 this girl, the girl -- and I demonstrated some bullet points in

1 my memorandum to show that she was very proactive in this
2 engagement.

3 Mr. Keeney takes full responsibility, and he
4 understands that what he did was wrong. Mr. Kenney should not
5 have crossed the line and it was a lapse in judgment. Okay.
6 But to the same end -- you know, and like I said, I
7 demonstrated some issues and some bullets to show that the
8 alleged victim -- or the victim, I should say, in this case,
9 was proactive in her conversations with --

10 *THE COURT:* I understand your argument.

11 *MS. TENNEN:* Okay.

12 *THE COURT:* Let me ask this question. I'm not sure if
13 it's in the pre-sentence report. If it is, I apologize for
14 forgetting it. Where was the victim from?

15 *MR. ZUBROD:* Washington state, Your Honor.

16 *THE COURT:* Okay. Okay. Mr. Zubrod, do you want
17 to respond?

18 *MR. ZUBROD:* Yes, Your Honor. And let me first
19 respond by saying it's our requirement to respond when the
20 Court asks as to what the law or our view of the guidelines
21 are. We have taken a different position in our recommendation
22 recommending -- we have not pushed the issue of undue influence
23 or improper influence in this particular case.

24 Our reason for doing so, we have a hostile and
25 suicidal victim, who believes that at age 18 she is going to

1 marry the defendant and that if she -- it was agreed by all
2 parties that it would be a risky proposal to put someone that
3 emotionally fragile on the stand. We have not pushed this
4 issue.

5 But the Court has asked us to respond specifically.

6 *THE COURT:* If you wish to.

7 *MR. ZUBROD:* I want to make sure that the Court
8 understands what the position is, why we're not pushing this
9 issue and we're standing by that.

10 But the defendant was in a mentor relationship with
11 her for over a year whereby they communicated back and forth
12 leading up to the sexual activity. And while -- and the victim
13 clearly has no ax to grind against the defendant. And she said
14 that I was the aggressor, I was the person who was out front
15 trying to get him to come with me. She has no ax to grind
16 against him. And yet, she was the one who said he provided the
17 alcohol to her.

18 So I think there is a basis for the Court making that
19 finding. Again, we're not asking the Court to. Our position
20 is based upon these things that the -- that enhancement not be
21 applied. But that's our position.

22 *THE COURT:* Okay. Well, it's a little difficult for
23 anyone, I think, to judge the matter of undue influence when
24 you don't have both sides of the issue before you. All I can
25 go by is what is in the pre-sentence report and what's been

1 revealed in the sentencing memorandum and so forth.

2 It does seem to me certainly, Mr. Kenney is accepting
3 responsibility. And I'm not condoning the action, but I really
4 do believe that the form of undue influence that's contemplated
5 by the guidelines does not exist in this case.

6 So I'm going to sustain that objection. I think that
7 removes four points from the --

8 MR. ZUBROD: I think two, Your Honor.

9 THE COURT: Two.

10 MS. TENNEN: I believe so, Your Honor.

11 THE COURT: And that takes the guideline then to what,
12 46 to 57?

13 MR. ZUBROD: Yes, sir.

14 THE COURT: All right. Then we're prepared to
15 proceed.

16 MS. TENNEN: Your Honor, Mr. Kenney, first of all,
17 would like to say something to the Court, but he also does, and
18 if I may ask the Court if he would be -- it is 10:00. I have
19 prearranged Mr. John Kobierecki, who has been a therapist for
20 Mr. Keeney for this year period and he's been seeking
21 counseling, and I have arranged, if the Court would allow, of
22 course, to have him on the telephone. He's at another hearing
23 which he has to testify at. So...

24 THE COURT: Where is he located physically?

25 MS. TENNEN: I believe --

1 *THE DEFENDANT:* Toward Williamsport. Williamsport
2 area.

3 *MS. TENNEN:* So I apologize to the Court. This is not
4 my usual method of presentation. But if the Court would allow
5 to try him on the phone, I would like him to speak.

6 *THE COURT:* What is his testimony going to be?

7 *MS. TENNEN:* Your Honor, he has visited and seen
8 Mr. Kenney on a number -- quite a number of occasions
9 throughout this past year. He has -- Mr. Keeney has sought
10 therapy with him in order to help him deal with this, his
11 problem emotionally and also confront head-on these issues.

12 Mr. Kobierecki wanted to just make a few statements
13 about his progress so the Court -- so when I finally do the
14 wrap for the Court and ask the Court for where I'm going with
15 this, it would kind of come into play. It would make more
16 sense to the Court why I'm asking for the things that I'm
17 asking for.

18 *THE COURT:* Is there some reason why I don't have a
19 written report from this gentleman?

20 *MS. TENNEN:* You know, Mr. Kobierecki did some prior
21 ones. He kind of did an attendance one. He didn't --

22 *THE COURT:* Okay. You answered my question.

23 *MS. TENNEN:* I'm sorry. There is no particular reason
24 Mr. Kobierecki didn't prepare one. And I think he would
25 prefer -- he had mentioned he would prefer to speak.

1 *MR. ZUBROD:* Counsel had requested Mr. Kobierecki to
2 supply a written memo.

3 *MS. TENNEN:* Yes, I did.

4 *MR. ZUBROD:* Yeah. And he simply did not comply with
5 your request but said he would be happy to discuss it by phone.

6 *MS. TENNEN:* Right, Your Honor.

7 *THE COURT:* I don't think this is an appropriate
8 procedure for me at a sentencing to hear a witness on the
9 telephone. So I'm not -- I mean, I'll take what you are
10 saying. I'm sure he would have positive things to say about
11 Mr. Keeney and his progress, but I think we'll skip the
12 telephone call.

13 *MS. TENNEN:* Okay.

14 *MR. ZUBROD:* I would note, Your Honor, that a
15 psychologist did do a very thorough battery and workup, and I
16 doubt that this other individual could match the quality of the
17 work that was done in that report.

18 *MS. TENNEN:* Your Honor, as well, I do have some other
19 character witnesses that would like to speak on Mr. Keeney's
20 behalf. That being his wife, Terry Keeney, and his nephew,
21 Colby, and his stepdaughter Courtney. As well as Frank, who is
22 his oldest friend of 37 years. And if I might, if the Court
23 would allow for them to make a brief, less than two-minute
24 statement to the Court, each of them.

25 *THE COURT:* All right. Sure.

1 *MS. TENNEN:* Okay. Thank you, Your Honor.

2 *THE COURT:* You can have them just come up and stand
3 beside you.

4 *MS. TENNEN:* Okay. Thank you. Let me just go get
5 them.

6 *THE WITNESS:* Good morning, Your Honor. My name is
7 Colby.

8 *THE COURT:* Do you want to ask the questions?

9 *MS. TENNEN:* If it would be okay, Colby -- we have
10 preprepared. We have spoken before this date, and he just
11 wanted to make some brief statement.

12 *THE COURT:* The witness should be identified. Would
13 you ask him the question?

14 *MS. TENNEN:* Yes. Can you state your name for the
15 record?

16 *THE WITNESS:* My name is Colby Swartz.

17 *MS. TENNEN:* Okay. Colby, would you care to make some
18 statements on behalf of Mr. Keeney today and state who -- what
19 your relationship with Mr. Kenney is.

20 *THE WITNESS:* My relationship is I'm his nephew. I've
21 known him pretty much all my life. I have worked for him now
22 for many years. He runs a great business. He's pretty much
23 the key in the business. He makes everything run in turn.
24 He's real hard working. And I don't believe that, you know,
25 until that point in my life where I went to work for him that I

1 learned the true meaning of work. He works hard, and he
2 expects his employees to work hard.

3 He's somebody that, you know, I've looked up to and I
4 have counted on. And just recently I've been doing remodeling
5 on my house. And you know how hard it is to get people to come
6 over and give you a hand on that, but he's been one of the few
7 people that I've been able to count on, and he's been there
8 when he said he was going to be there, on time, ready to go.
9 He's made a lot of great progress in that for me.

10 *THE COURT:* Thank you, Mr. Colby.

11 *THE WITNESS:* Thank you, Your Honor.

12 *THE COURT:* You can just call the next witness.

13 *MS. TENNEN:* Okay. Thank you. Courtney.

14 State your name for the record.

15 *THE WITNESS:* My name is Courtney Nicole. And I'm
16 Gene's oldest stepdaughter. I hope today to give you a little
17 sense of the man I know. Gene and my mom married when I was
18 four years old. He is pretty much the man who has raised my
19 sister and I, pretty much the only father figure I have ever
20 known.

21 He has always been very driven and a very hard worker.
22 From the time he was actually very young, he became a
23 successfully businessman entirely on his own. Started a
24 business from the ground up and able to support our family and
25 give us a better life than what he had as a child.

1 With that, actually watching him, it instilled a very
2 good work ethic in me and has made me a successful adult, as
3 well.

4 As adults we still look to him for advice and for
5 guidance. He also is just a shoulder to lean on and somebody
6 that definitely leads us in the right direction and has never
7 steered us wrong. He has always been there for us.

8 And today, as a family, we stand in court today to be
9 here for him. I just hope that you take it into consideration.

10 *THE COURT:* I certainly will. Thank you.

11 *THE WITNESS:* Thank you.

12 *MS. TENNEN:* Frank.

13 *THE WITNESS:* Good morning, Your Honor. My name is
14 Frank Fish. I have traveled here from Las Vegas, Nevada to
15 speak in behalf of my good friend, Gene. We've been friends
16 for over 37 years. I've grown to know Gene from his troubled
17 childhood and family to the man that stands before you today,
18 very humble.

19 I have witnessed for the last 24 years with his wife,
20 Terry, and his two stepdaughters just the man that -- and
21 businessman that he has become from a small business to a
22 million dollar company, just supporting his family in every
23 way.

24 And I believe the lapse in judgment that he had, he
25 will change his attitude completely about his life and

1 everything for the Court.

2 *THE COURT:* Thank you, Mr. Fish. Appreciate you
3 coming.

4 *MS. TENNEN:* State your name for the record and your
5 relationship to Mr. Keeney.

6 *THE WITNESS:* My name is Terry Kenney, and I'm
7 Eugene's wife. I would like to express regret that we have to
8 all be here today because of Gene's actions. And I would like
9 to also state that I am heartbroken about the distress and
10 anguish that has been caused to this family because of it.

11 Unfortunately, once we do something, it's impossible
12 to take it back. So we just have to do what is possible for
13 us. And I do believe that Gene is trying very hard to do what
14 he can. He and I will be married for 25 years in November. He
15 has been an exceptional partner. We have seen each other
16 through just about everything that has come our way.

17 These have been the happiest 25 years of my life. We
18 complement each other perfectly. And we depend on each other
19 for support. We love each other unconditionally. And it was
20 for these reasons that I decided that I needed to react to this
21 situation calmly and with as much insight as possible.

22 So I felt I had an interesting vantage point here, and
23 I tried to remember everything I knew for sure. And then I
24 spoke with my daughters, which was very comforting to me. And
25 then I read the reports and the psychiatric evaluations, the

1 statements, and I asked my husband questions and I scrutinized
2 his answers. And I waited and I watched everything.

3 And I noticed that Gene was having trouble sleeping at
4 night. And then I would find him in the wee hours of the
5 morning; he would be in our family room reading books that he
6 borrowed from a man at the therapy group. The man had said
7 they helped him. Or sometimes he would be reading other
8 self-help books that he had or sometimes the Bible. Sometimes
9 he would just be reflecting on the mess that he had created.

10 During this time Gene was under house arrest. So he
11 was spending more time at home. And he wasn't changing the oil
12 in the car or mowing the lawn. And we began to -- we began to
13 talk more together. He was helping with the housework. And we
14 were talking to each other the way we used to, and I saw Gene
15 making progress. And so I knew he was trying hard to improve,
16 and I began to believe in my husband again.

17 I decided that he deserved my love and support. And
18 so we renewed our commitment to each other and our devotion to
19 our faith, which we had neglected for some time. We
20 resurrected our dreams and our goals and our values. And then
21 I remembered something Gene used to tell us all, our whole
22 family, to inspire our girls when they were growing up. He
23 would say don't say can't, say won't.

24 He had overcome many obstacles in his life, and he
25 achieved a measure of success because he lived by those words.

1 Now those words would inspire me once again. I was determined
2 and I am determined that I will never say can't or won't. I
3 will find the strength and the courage to see us through this
4 and to help Gene in any way that I can. And while I know life
5 doesn't come with any guarantees, and neither does marriage, I
6 trust my husband and I have faith and I am confident that this
7 will never, ever happen again.

8 And I just want to thank you for your undivided
9 attention to my thoughts.

10 *THE COURT:* I appreciate you being here. I certainly
11 understand your feelings and sympathize with you.

12 *THE WITNESS:* Thank you. I am grateful for your
13 attention.

14 *THE COURT:* Thank you. Okay.

15 *MS. TENNEN:* Mr. Keeney is the last one on the deck.
16 He would like to make some statements to Your Honor.

17 *THE COURT:* Mr. Keeney.

18 *THE DEFENDANT:* Thank you, Your Honor, for allowing me
19 to speak. First and foremost, I would like to apologize deeply
20 to everybody that has to be here because of me, particularly to
21 my victim and her family.

22 For the past 31 months I have thought long and hard
23 about what I've done and the people I have hurt. As my wife
24 said, many nights I have been awake thinking about everything
25 that I've done. I have prayed that somehow the pain would

1 subside for them. To this day I have yet to forgive myself.

2 Under no circumstances -- under no circumstances could
3 this ever be excused. This has brought so much undue reproach
4 upon both my family and my friends. Unfortunately, I cannot
5 undo the past. However, I can and I will do everything
6 possible to make amends to everyone, to whatever extent it
7 takes for me. I can change and I am going to change. There is
8 never a chance that this will ever happen again. I promise
9 that.

10 As my attorney said, I'm currently actively
11 participating in extensive counseling. I have been there for
12 11 months, in which both includes group and private therapy.
13 Today I have a better understanding as to what it was within me
14 that allowed me to do what I have done.

15 My goal is to continue this for as long as it takes to
16 complete and gain insight as to who I am and what steps are
17 necessary to absolutely, again, ensure that this will never
18 happen again.

19 I have learned although never an excuse for conduct,
20 my past childhood and adolescent years have caused me deep
21 emotional issues that have carried many years on into
22 adulthood, ultimately leading me here. I look back and truly
23 regret not properly dealing with them before all of this. Had
24 I, I believe this would have never occurred.

25 I was too embarrassed. I was too ashamed of the

1 secrets of my family and my past. I was so ashamed I could
2 barely talk to my wife about it. Recently we discuss it more.
3 I have always tried to suppress everything by ignoring it,
4 hoping it would all just go away. I know that that doesn't
5 happen now. I know our ghosts of our past are forever present
6 until we properly deal with them.

7 I stand before you today, Your Honor, willing to take
8 the punishment that is due. It is my sincere hope that today
9 will give my victim and their family closure to this, and they
10 can move forward.

11 I am committed to seeing this to the end and then once
12 again returning to society a good person and an asset. I feel
13 that I still have many good things to offer, if given the
14 chance. I am determined to forever improve myself and to be a
15 better man again one day.

16 That's basically all I have to say. I am very sorry.

17 *THE COURT:* Thank you, sir. Mr. Zubrod.

18 *MR. ZUBROD:* Your Honor, I'm required to advocate for
19 the victim in this case. It's clear that remorse is present in
20 this situation. It is clear that the defendant has a support
21 network of family that has stayed with him. Remorse is
22 present.

23 But the terrible damage has been done. This 14 year
24 old was a troubled kid and the defendant knew that. He knew it
25 for a year, because even after her mother had forbidden her to

1 have contact with him, he sent her a cell phone that they could
2 maintain contact. She's a train wreck today. She has had two
3 suicide attempts. She is -- lives in this dreamworld that she
4 is going to be reunited with the defendant in the future.

5 I would also point out that we have had the
6 psychological assessments of the defendant. I would simply
7 point out that there's a study by Michael Seto, who is at the
8 Center for Addiction and Mental Health at the University of
9 Toronto, and he said when he did a study of people involved in
10 child pornography; the question was what is the risk of a
11 contact offense for a person who has been convicted under the
12 child pornography statutes, and he said it is unknown. All
13 that you can show is that people who have had a prior contact
14 offense are at the highest risk for reoffending.

15 And for that reason, we feel that a jail sentence is
16 appropriate, that the guideline range that has been recommended
17 both by the defense and by the United States is an appropriate
18 range. We recommend the low end of that range, and we ask in
19 any case for just and appropriate sentence.

20 *THE COURT:* This is an extremely sad case for
21 everybody involved. There is just no way that Mr. Kenney can
22 justify what he did, even though the victim here may have been
23 willing and even aggressive. A 50-year-old man, or whatever
24 you were at the time, maybe 48, and a 14-year-old girl, there
25 is just no way around the terrible thing that happened out

1 there in California.

2 I've looked, Mr. Kenney, at your background, and you
3 had some serious problems when you were young, 18 and 20 years
4 old, and you seem to have overcome those problems by building a
5 very successful business that you operate and you have the
6 support of friends and family, even though this sort of thing
7 would turn some people away.

8 I was very impressed with your wife's statement, and I
9 know that you were, as well. But there is no way that the
10 Court can avoid sending you to jail.

11 I've considered the 3553(a) factors, and obviously
12 this is a very serious offense. It's one that does require
13 some punishment and also hopefully give you time to recognize,
14 if you haven't already, a harm that's been done not only to the
15 victim but to yourself and your family.

16 I do believe, considering all of the circumstances
17 here, that some variance is justified from the sentencing
18 guidelines.

19 So pursuant to the Sentencing Reform Act, it's the
20 judgment of the Court on count one that the defendant, Eugene
21 Keeney, is committed to the custody of the Bureau of Prisons to
22 be imprisoned for a term of 36 months. We recommend that the
23 Bureau of Prisons provide the defendant with sexual offender
24 and mental health counseling while he is incarcerated.

25 We find that the defendant has the ability to pay a

1 fine; and accordingly, we order that he pay the clerk, United
2 States District Court the sum of \$10,100, consisting of a
3 special assessment of \$100, which is due immediately, and a
4 fine of \$10,000. Payment of interest is waived.

5 During the term of imprisonment the fine is payable
6 every three months in an amount after a telephone allowance
7 equal to 50 percent of the funds deposited into the defendant's
8 inmate trust fund account.

9 In the event that the fine is not paid in full prior
10 to commencement of supervised release, the defendant shall, as
11 a condition of release, satisfy the amount due in monthly
12 installments of no less than \$200 to commence 30 days after
13 release from confinement.

14 Upon release from imprisonment, the defendant is
15 placed on supervised release for a term of 20 years. Within
16 three days of his release from the custody of the Bureau of
17 Prisons, he shall report in person to the probation office in
18 the district to which he is released.

19 While on supervised release, the defendant shall not
20 commit any federal, state or local crime and shall not possess
21 a dangerous weapon. The defendant shall comply with the
22 standard conditions that have been adopted by this Court, and
23 in addition, shall submit to one drug test within 15 days of
24 commencing supervision and at least two periodic drug tests
25 thereafter.

1 The defendant shall comply with the requirements of
2 the Sex Offender Registration and Notification Act. The
3 defendant shall participate, at his expense, in a sex offender
4 treatment program which may include risk assessment testing,
5 counseling, therapeutic polygraph examinations, and shall
6 comply with all requirements of the treatment provider. The
7 treatment is to be conducted by a therapist approved by his
8 probation officer.

9 The defendant shall have no direct or indirect contact
10 with any person under the age of 18 except in the presence of
11 an adult who is aware of the nature of the defendant's
12 background, including the current offense, and who has been
13 approved by the probation officer.

14 The defendant shall submit his person and property to
15 search at any time with or without a warrant by any law
16 enforcement or probation officer with reasonable suspicion
17 concerning a violation of the conditions of supervised release.

18 The defendant shall comply with the terms and
19 conditions set forth in the computer monitoring/filtering
20 participation -- participant agreement for the Middle District
21 of Pennsylvania and shall pay the costs of the computer
22 monitoring/filtering program not to exceed the monthly
23 contractual rate in accordance with the probation officer's
24 instructions.

25 The defendant shall undergo a mental health

1 evaluation, and if recommended, shall satisfactorily complete a
2 program of outpatient or inpatient mental health treatment.
3 And he shall cooperate in the collection of DNA as directed by
4 his probation officer, unless a sample was collected during his
5 confinement.

6 We are going to approve Mr. Keeney for voluntary
7 surrender. We presume there is no objection to that.

8 *MR. ZUBROD:* No, sir.

9 *THE COURT:* I direct that he surrender at the
10 institution designated by the Bureau of Prisons before
11 2:00 p.m. on Monday, June the 13th. The defendant shall
12 contact the United States Marshal's Office no later than three
13 days prior to the -- to that date to be notified of the place
14 of his confinement.

15 Mr. Kenney, I take no pleasure in imposing this
16 sentence upon you, but I think as I've indicated, it's
17 deserved. And I hope that you will be true to your word, get
18 through this and get back to a life that you can be proud of.

19 I now want to advise you of your appellate rights.
20 You can appeal your conviction if you believe that your guilty
21 plea was somehow unlawful or involuntary or if there is some
22 other fundamental defect in the proceedings that was not waived
23 by your guilty plea. You also have a statutory right to appeal
24 your sentence under certain circumstances, particularly if you
25 think the sentence is contrary to law.

1 Any such appeals must be filed within 14 days of
2 today's date. If you're unable to pay the costs of an appeal,
3 you can apply for leave to appeal in forma pauperis, and if you
4 so request, the clerk of courts will prepare and file a notice
5 of appeal on your behalf.

6 And I'm sure Ms. Tennen will discuss with you whether
7 an appeal is anything you should be considering. But for the
8 record, Mr. Keeney, do you understand that should you want to
9 appeal for any reason, you must do so within the next 14 days?

10 *THE DEFENDANT:* Yes, Your Honor.

11 *THE COURT:* All right. Is there anything to be
12 dismissed, Mr. Zubrod?

13 *MR. ZUBROD:* No, sir.

14 *THE COURT:* All right.

15 *MS. TENNEN:* Your Honor, if I may really quickly, if
16 you would be so kind as to recommend -- I know that there is a
17 possibility to recommend to the Bureau of Prisons that he is
18 put in a low security facility, if that would be okay, Your
19 Honor.

20 *THE COURT:* Okay. We certainly do heartily recommend
21 to the Bureau of Prisons that he be placed in a low security
22 institution, if that is available and appropriate, keeping in
23 mind that the defendant's family, I believe, is in this area
24 and probably would appreciate the defendant being confined
25 somewhere in the vicinity.

1 *MS. TENNEN:* Yes.

2 *THE COURT:* This case is concluded.

3 We'll take a ten minute recess at this time.

4 *MR. ZUBROD:* Thank you, Your Honor.

5 *MS. TENNEN:* Thank you, Your Honor.

6 *THE COURTROOM DEPUTY:* Court is in recess for ten
7 minutes.

8 (10:31 a.m., court adjourned.)

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REPORTER'S CERTIFICATE

I, Lori A. Fausnaught, RMR, CRR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

s/Lori A. Fausnaught, RMR, CRR

Lori A. Fausnaught, RMR, CRR
Official Court Reporter

REPORTED BY:

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